Comptroller issued her a valid notice for tax payable on the premises as under section 19(1) tax was "payable from the date of completion of the work of erecting" the premises. And under section 19(4), the Comptroller may collect back tax for six years. The facts in this appeal are materially different from the facts in *Ong Poh Tan's* case. That case is to be distinguished from the present one, as unlike in that case, the respondent knew when she bought the premises that tax would be due on it when it is placed in the Valuation List. The tax is a charge on the premises. The respondent is accordingly liable to pay the tax on the premises with effect from February 7, 1975.

The appeal is allowed. By consent, there will be no order as to costs.

Appeal allowed.

Solicitors: *Oehlers & Choa.*

WEE TECK NEO & ORS v. R.M. PITTENDRIGH & ANOR.

[A.C.J. (Abdul Wahab Ghows J.) February 18, 1981]
[Singapore — District Court Appeal No. 71 of 1979]

Landlord and Tenant — Tenancy of premises for three years — Tenant becoming statutory tenant at end of three years — Notice asking for delivery of vacant possession of premises — Not valid notice to quit — Separation agreement between tenant and his wife — Wife occupying premises under separation agreement — Wife subsequently divorced — Children of tenant also residing in the premises — Children over 16 years of age at date of hearing — Member of family — Landlord not entitled to possession — Control of Rent Act (Cap. 266), s. 16.

In this case the first respondent became the tenant of the premises on the conditions contained in a letter written by him to the Choo Lye Huat, whose executors and trustees were the appellants. The tenancy was for a period of 3 years from March 1, 1957. On December 7, 1959 the Solicitors for Choo Lye Huat sent a letter to the first respondent asking him to deliver the premises by the end of February 1960. The first respondent however continued to occupy the premises after the expiry of the period of three years. In 1966 the first respondent entered into a separation agreement with his wife, the second respondent, under the terms of which the second respondent was to be entitled to occupy the premises. Subsequently in December 1971, the first respondent was divorced but she continued to live in the premises with her children. The children were then under 16 years of age. The appellants applied for possession of the premises but by the time of the hearing the children were over 16 years of age. The learned District Judge dismissed the application and the appellants appealed to the High Court.

Held: (1) the letter of December 7, 1959 requesting the first respondent to deliver vacant possession of the premises by the end of February 1960 did not determine the tenancy of the first respondent under the tenancy agreement;

(2) the tenancy of the first respondent came to an end upon the expiry of the last day of the three years term and thereafter the first respondent held the premises as a statutory tenant;

(3) the second respondent's occupation of the premises was protected so long as she remained the wife of the tenant but on her divorce neither she nor the first respondent could claim the protection of the Control of Rent Act as no member of the first respondent's family was residing therein, the respondent's two sons being then under 16 years of age;

(4) at the date of the hearing before the District Court the two sons were already over 16 years of age and were members of the tenant's family residing in the premises. The learned District Judge was therefore precluded by section 16 of the Control of Rent Act from giving judgment in favour of the appellants;

(5) the separation agreement did not transfer or assign the premises to the second respondent. The first respondent gave his wife nothing more than a licence to occupy the premises with the children of the marriage without interference from him.

Cases referred to:-

(1) *Mohamed Hidayatullah* v. *Tang Keo Eang* [1972] 1 M.L.J. 4.

(2) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

(3) *Che Esah & Anor* v. *Che Limah* [1966] 1 M.L.J. 36.

(4) *Brown* v. *Draper* [1944] 1 All E.R. 246.

(5) *Cobb* v. *Lane* [1952] 1 All E.R. 1199, 1202.

DISTRICT COURT APPEAL.

Kirpal Singh for the appellants.

Tay Soo Tee (*Lawrence Khoo* with him) for the respondents.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: This appeal arises from a claim of the appellants for the recovery of possession of the premises known as No. 33 Jervois Road, Singapore. The said premises were let to the first respondent/defendant on the conditions set out in the following letter dated March 8, 1957 from the first respondent to one Choo Lye Huat whose executors and trustees are the appellants/plaintiffs in this case:—

"Singapore, 8th March 1957

Choo Lye Huat, Esq.,
4A Robinson Road,
Singapore.

Dear Sir,

33 Jervois Road, Singapore.

Further to this morning's conversation between your goodself and the writer, I hereby agree to accept tenancy of 33 Jervois Road, Singapore, in accordance with the following conditions:—

(1) Monthly rent of $86 to be paid each month in advance for 1957.

(2) Lease to be of three years duration with effect from March 1, 1957, and subject to renewal, yearly in accordance with the City Council's revision of annual value and rents to be paid accordingly.

(3) Tenancy not to be transferable.

(4) Sub-letting not permitted.

I shall be glad if you will kindly indicate approval, and acknowledge receipt of this letter of agreement by signing the attached copy in the space provided for that purpose.

Yours faithfully,
Sgd. R.M. PITTENDRIGH."

On December 7, 1959 Messrs. Oehlers & Choa, acting for Choo Lye Huat wrote the following letter to the first respondent:—

"7th December 1959

Mr. R.M. Pittendrigh,
No. 33 Jervois Road,
Singapore.

Dear Sir,

re. No. 33 Jervois Road, Singapore.

We have been consulted by Mr. Choo Lye Huat your landlord of the above premises.

We understand from our client that the above premises was rented to you under an agreement for a period of three years at a monthly rental of $86 per month.

Our client further informs us that the three years will expire at the end of February 1960 and as instructed this is to request you to deliver vacant possession of the premises to our client by the end of February 1960.

Our client has kindly allowed you to have the use and occupation and enjoyment of the premises for a period of three years and we shall be very much obliged if you will kindly deliver vacant possession of the premises to our client as soon as the said period of three years has elapsed, that is, by the end of February 1960.

Please let us have your favourable reply.

Yours faithfully,
Sgd. OEHLERS & CHOA."

The appellants contended that this letter dated December 7, 1959 was a valid notice to quit which determined the first respondent's tenancy at the end of February 1960 and thereafter the first respondent was the statutory tenant of the premises in question. The respondents on the other hand argued that this letter could not amount to a notice to quit and did not determine the tenancy, citing *Mohamed Hidayatullah* v. *Tang Keo Eang,*[1] in which the Chief Justice in delivering the judgment of the Court of Appeal said: —

"It is settled law that the essence of a notice to quit is to determine the tenancy, whether the other party likes it or not ...."

The respondents further claimed that from March 1, 1960 the first respondent held the premises on a yearly tenancy having exercised the renewal option contained in the aforesaid tenancy agreement.

The Court of Appeal in *Mohamed Hidayatullah* v. *Tang Keo Eang, supra,* was considering a notice to quit under section 15(1)(f) of the Control of Rent Act (Cap. 266) but I can see no reason, either on principle or on authority, why a notice to quit given by a landlord should not likewise be effective to determine the tenancy of the tenant against his will. In my judgment the letter dated December 7, 1959 requesting the first respondent to deliver vacant possession of the premises by the end of February 1960 did not determine the tenancy of the first respondent under the aforesaid tenancy agreement. But I am of the view the said tenancy agreement did not give the first respondent a perpetual right of renewal with or without the landlord's consent. His tenancy under the aforesaid agreement came to an end on February 29, 1960 upon the expiration of the last day of its three-year term, and thereafter the first respondent held the said premises as a statutory tenant. In any event, from the correspondence which passed between the solicitors of the landlord and the first respondent it appears that the parties agreed that the first respondent was to be regarded as a statutory tenant after the expiry of his three-year contractual tenancy. I think it is now not open to the respondents to claim that the first respondent is still a contractual tenant of the said premises.

On November 28, 1974 a notice to quit was served on the first respondent referring to him as a statutory tenant of No. 33 Jervois Road, Singapore, and requiring him to quit and deliver up possession of the said premises on December 31, 1974.

The appellants conceded that this notice to quit did not have the effect of determining the first respondent's statutory tenancy.

The first respondent and his wife, the second respondent, were living with their two sons, the elder born on April 5, 1960 and the younger on June 1, 1962, in the aforesaid premises until March 1966 when they agreed to separate and live apart from each other. The separation agreement dated April 16, 1966 made between the two respondents contained two clauses relevant to these proceedings: —

"NOW THIS AGREEMENT WITNESSES as follows:—

1. In pursuance of the said Agreement and in consideration of the premises the Husband hereby covenants with the Wife as follows namely:—

xxx xxx

(f) The Husband hereby relinquishes all claims and control of the premises No. 33 Jervois Road, Singapore, together with the furniture and contents therein and hereby declares that the Wife shall be entitled to the same absolutely. The Husband shall however continue to pay the rentals in respect of the said house and shall if so required by the Wife execute any instrument or instruments pertaining to the tenancy.

xxx xxx

4. In case the Husband and Wife shall at any time hereafter by mutual consent cohabit as man and wife or if the Wife shall re-marry then in such case the monthly sum and all other sums payable by the Husband shall no longer be payable and all covenants and agreements hereinbefore contained shall become null and void; provided that in the case of remarriage by the Wife the Husband shall continue to be liable for the maintenance of the children and also for their education including the university education local and abroad."

Thereafter the first respondent never returned to live in the aforesaid premises. After residing for some time in Kuala Lumpur he returned to live and work in London where he bought a house, renounced Singapore citizenship and divorced his wife, the second respondent. The decree nisi of divorce was made absolute on December 17, 1971. However, the first respondent still continues to pay the rent of the aforesaid premises.

Appellants' counsel contended that since he left the matrimonial home in March 1966 the first respondent had shown no intention of returning to reside in it. The second respondent's occupation of the aforesaid premises was not to preserve them for the first respondent's ultimate home-coming. Therefore second respondent's occupation of the premises was protected so long as she remained his wife but on her divorce neither she nor the first respondent could claim the protection of the Control of Rent Act as no member of the first respondent's family was residing therein, the respondents' two sons then being under 16 years of age. Appellants' counsel argued that his clients were therefore entitled to possession of the said premises and judgment against the first and second respondents, adding that if the two children thought they had any right to remain in occupation of the premises they could come to court under Order 45 rule 3 of the Rules of the Supreme Court. In support of his argument he referred to a passage in *Megarry's* Rent Acts, 9th edition, page 176 which reads as follows: —

"... It is an essential ingredient that the tenant should retain possession continuously of the dwelling house. Thus if the condition has once been broken, a statutory tenancy cannot be treated or revived by re-occupation, whether before, or a

fortiori, after, the commencement of proceedings for possession; the price of a statutory tenancy is continuous residence. ..."

However, our Control of Rent Act requires different considerations to be applied when a tenant or a member of his family is residing in the premises. In Singapore this situation is governed by paragraph (c) of section 16 of the Control of Rent Act which reads as follows: —

"16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Act may without prejudice to the provisions of section 15 be made in any of the following additional cases namely:—

xxx xxx

(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

The phrase "member of his family" is defined in section 2 of the Control of Rent Act to include the tenant's wife or widow or his son or daughter who is over 16 years of age.

The first part of paragraph (c) of section 16 which relates to the tenant's residence reproduces in our Control of Rent Act the principles laid down in English case law namely, that a tenant who is not resident is not entitled to the protection of the Rent Acts, but the second part of paragraph (c) which relates to occupation by a member of the tenant's family introduces a new principle not found in English law.

The introduction of this new principle has produced a profound change in the law, which was explained in *Khadijah binte Abdullah* v. *S.I.A. Alsagoff*.[2] This was an appeal from a judgment in which it was held that the plaintiff was entitled to possession of a house known as 367 Orchard Road. The action was brought by the plaintiff against his former wife with a view to evicting her from the former matrimonial home which she had continued to occupy since their divorce in 1951. After their divorce, the plaintiff allowed her to remain in possession of the house, he paying the monthly rent to the landlord and living elsewhere. There was one period of a few months when he failed to pay the rent and the defendant paid it instead but he resumed payment after this interval and has continued to pay the rent right up to the commencement of the proceedings and indeed since that date. The parties had five children of whom the eldest was a daughter born on November 18, 1936. Since the divorce, the girl and a younger brother lived with their mother at the premises, and the remaining children lived with the plaintiff. At the date of the divorce the eldest girl was under 15 years of age. In 1953 the landlord served a notice to quit on the plaintiff but the plaintiff did not comply with the notice and accordingly claimed that he became a statutory tenant as from that date. During the whole of the period of four years or thereabouts which had elapsed since the plaintiff and defendant were divorced, the former had never set foot in these premises and indeed had never sought to do so except for the limited purpose of removing some sports gear and other personal belongings which he left behind when they parted in 1951. But in December 1954 he changed his mind. The explanation for this was that he "might get married and wanted the house back." Three months later, on March 10, 1955, he served a notice to quit on the defendant, requiring her to deliver up possession of the house which he claimed she held as a licensee on June 10, 1955, and as she did not do so, he issued the writ in these proceedings on June 23, 1955.

The court held that the plaintiff remained in possession through his daughter who had by then attained the age of 16 years and therefore he became a statutory tenant on the determination of his contractual tenancy. Having become a statutory tenant, the plaintiff remained under the protection of the Control of Rent Ordinance because his daughter was a member of his family residing in the premises. By preserving his status as statutory tenant the plaintiff also established a sufficient right to or in the premises to support an action for trespass. Whyatt C.J. in his judgment at page 92, said: —

"...As I have already said, in Singapore a statutory tenant can resist a landlord's claim on two alternative grounds: first, on the ground that he is in residence either personally or by means of a caretaker who is preserving the premises for his return, this ground being founded on the first part of paragraph (c) of section 16 and English case law; secondly, on the ground that a member of his family is residing in the premises, this ground being based on the special statutory provisions in the second part of paragraph (c) of section 16...."

Section 12(1)(i) of the Control of Rent Ordinance, 1956 of the Federation of Malaya is *in pari materia* with section 16(c) of our Control of Rent Act. In the case of *Che Esah & Anor.* v. *Che Limah*,[3] the respondent was the owner of the premises which she rented out to one Mohamed Merah on a monthly tenancy. Mohamed Merah died in 1947 leaving his widow the first appellant, and a son, the second appellant, in occupation of the house. The first appellant remarried and went to live with her new husband in another town. During her absence the said premises were occupied by one Packeer Mohamed till 1962 when he went back to India. According to the respondent the first appellant then resumed occupation of the said premises. This was denied by the first appellant who contended that she was in continuous occupation from the death of her husband. The respondent obtained an order in the Sessions Court against the appellants for the surrender of vacant possession of the said premises and damages for unlawful occupation thereafter. The appellants appealed. The Federal Court held that the first appellant was a "widow" of the tenant for the purposes of the Control of Rent Ordinance. Barakbah C.J. (Malaya), delivering the judgment of the Federal Court, added: —

"...The next point for consideration is whether the first appellant had left the premises and then reoccupied it in 1962, as alleged by the respondent. First appellant denied this and stated that she was in continuous occupation from the death of her husband. But assuming that she had left and then came back, would it affect the tenancy of the premises? Referring again to Megarry on the Rent Act 9th Ed. p. 224 it was stated that although the landlord's claim to possession at common law must be complete when the proceedings are commenced, the circumstances relevant to his claim to possession under the Acts, both as to reasonableness and, in general, the specific heads, are those existing not when proceedings are commenced but at the date of the hearing by the court of trial, and not the Court of Appeal. See the cases of *Hutchinson* v. *Jauncey*, [1950] 1 K.B. 574 and *Remon* v. *City of London Real Property Company Ltd.*, [1921] 1 K.B. 49. In the present case, no notice was served on the legal representative of the deceased tenant or the Chief Justice. The only notice served was on the widow, the first appellant, on

February 28, 1963 and the hearing in the Sessions Court began on November 27, 1963. In my view, therefore, as the law applicable was the law as it existed at the date of the hearing, and as the tenancy was then protected by the provisions of the Control of Rent Ordinance 1956, no order for possession could be made...."

Brown v. *Draper*,[4] is authority for the proposition that the only ways in which a tenant can be deprived of the protection of the Rent Acts are by giving up possession, in which case no order for recovery of possession against him is required, or by having an order for recovery of possession made against him. In the present case, by the time the appellants came to court to recover possession of the said premises against the first respondent, they were too late. At the date of the hearing his two sons were already over 16 years of age and were members of his family residing in the said premises. The learned District Judge was therefore precluded by section 16 of the Control of Rent Act from giving judgment in favour of the appellants.

The appellants had another string to their bow. They claimed that the first respondent had assigned the tenancy of the said premises to the second respondent in breach of the condition of his tenancy agreement prohibiting an assignment and they were therefore entitled to recover possession of the said premises under section 15(1)(b) of the Control of Rent Act. The appellants contended that clause 1(f) of the separation agreement between the first respondent and his wife dated April 16, 1966, was an assignment of the tenancy of the said premises. In my view clause 1(f) of the separation agreement should not be read in isolation. When it is read in the context of the entire agreement it is clear that the parties had intended that the wife and children should be allowed to reside in the said premises undisturbed so long as she did not remarry. As Denning L.J. said in *Cobb* v. *Lane*,[6] at page 1202:—

"....The question in all these cases is one of intention. Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?..."

The first respondent by the separation agreement undertook to pay the rent of the said premises as well as to maintain his wife and infant children. He did not intend to give his wife any interest in the land. This is borne out by the affidavit which he swore on February 22, 1971 and filed in the Divorce Registry of the High Court of Justice in London, in which he said:—

"4. I have a contractual tenancy of the business premises in Malaysia at 48 Jalan Beka, Damansara Heights, Kuala Lumpur, Malaysia. I also hold the tenancy of the former matrimonial home at 33 Jervois Road, Singapore, 10. I own a Mercedes Benz car which I use for business purposes on my visits to Kuala Lumpur the value of which is approximately £1,000."

It is my judgment that the said separation agreement did not transfer or assign the said premises to the second respondent. The first respondent gave his wife nothing more than a licence to occupy the premises with the children of the marriage without interference from him.

For the above reasons I am clear that the appellants are not entitled to recover possession of the said premises either from the first respondent or from the second respondent as she is the first respondent's licensee. In the result this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Foo & Quek.*

RE TELOK BLANGAH ELECTION

[O.C.J. (Sinnathuray J.) February 27, 1981]
[Singapore — Election Petition No. 1 of 1981]
[Summons in Chambers 492 of 1981 & 510 of 1981]

Election Petition — Service — Personal service — Parliamentary Elections Act (Cap. 50) 3rd Schedule — Parliamentary Elections Petition Rules, rr. 10 and 15.

These were two applications to set aside the service of documents relating to an election petition and for the dismissal of the petition. At the general election held in Singapore on December 23, 1980, for the electoral division of Telok Blangah there were two candidates. On that day the Returning Officer, Ong Kok Min, returned Rohan Kamis as the duly elected Member for Telok Blangah. On January 17, 1981, Chiew Kim Kiat, a voter in the constituency presented and filed the present election petition in the registry of the Supreme Court whereby she prayed "that it might be determined that the said Rohan Kamis was not duly elected or returned and that the election was void." In the petition no one was named as a respondent but Ong Kok Min filed a notice of appointment on February 2, 1981 appointing the Attorney-General or State Counsel to act for him in the proceedings. A similar notice was filed by Rohan Kamis on February 4, appointing Messrs. Rodyk & Davidson to act on his behalf. Following the filing of the notices, applications were taken out on behalf of the respondents which were the subject matter of these proceedings. The respondents submitted that the petitioner had not served on Ong Kok Min and Rohan Kamis a notice of the presentation of the petition and a copy of the petition in accordance with the rules relating to the service of election petitions.

Held: (1) rule 15 requires that notice of the presentation of a petition accompanied by a copy thereof shall within 10 days of the presentation of the petition be served by the petition on the respondent. Such service means personal service and personal service means serving the respondent with a copy of the election petition and showing him a sealed copy if he desires it. However, leaving a copy of the petition with a subordinate officer of Ong Kok Min was not personal service on him;

(2) the election petition is a court document and having regard to the decision in *Devan Nair's case*[1] the election petition must be personally served;

(3) as Rohan Kamis did not avail himself of rule 10 the proper method of service of an election petition on him was either by way of personal service or to leave a copy of the petition at the office of the Registrar of the Supreme Court under rule 10, and under rule 15, to publish a notice in the Gazette stating that a petition has been presented, and that a copy of the same may be obtained by Rohan Kamis on application at the office of the Registrar. Here also, the petitioner had not complied with rules 10 and 15 in effecting service of a copy of the petition on him;

(4) as regards both the respondents, the petitioner had not complied with rule 15 in that in purporting to effect service on the respondents she had not served a notice of the presentation of the petition on them;

(5) for these reasons the service of the documents on Ong Kok Min and Rohan Kamis must be set aside and the election petition dismissed.

Case referred to:-

(1) *Devan Nair* v. *Yong Kuan Teik* [1967] 1 M.L.J. 261; [1967] 2 A.C. 31.

ELECTION PETITION SUMMONS IN CHAMBERS.

J.B. Jeyaretnam (*R. Murugason* with him) for the petitioner.